STEWART CAPITAL CORP.

IBLA 81-272 Decided March 30, 1981

Appeal from the Wyoming State Office, Bureau of Land Management, which dismissed appellant's protest of the return of drawing entry cards filed for the November 1980 simultaneous drawing.

Affirmed.

1. Applications and Entries: Filing -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing -- Regulations

   Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to meet the $10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

2. Accounts: Payments -- Applications and Entries: Filing -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

   Orderly administration of the oil and gas leasing program demands that filing fees be paid to BLM in a manner consonant with administrative convenience and in accordance with the regulations. This necessarily requires that BLM cannot, without prior written instruction, transfer money paid for one purpose to another use, e.g., money paid for one month's simultaneous drawing to another month's simultaneous drawing.

3. Administrative Procedure: Hearings -- Rules of Practice: Appeals: Hearings

The Board of Land Appeals has the discretion to grant a request for a hearing on issues of fact but, in order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

APPEARANCES: Craig R. Carver, Esq., Denver, Colorado, for appellant; Harold J. Baer, Jr., Esq., Office of the Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Stewart Capital Corporation, hereinafter appellant, appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 30, 1980, which dismissed appellant's protest regarding the return of drawing entry cards filed by appellant for the November 1980 simultaneous drawing. 1/

Appellant filed 5,906 drawing entry cards (DEC's) on behalf of various clients in the January and February 1980 simultaneous drawings. The sum of $59,060 was remitted to BLM as filing fees for those drawing entry cards. Pursuant to Secretarial Order No. 3049, issued on February 29, 1980, and various subsequent orders, the January and February simultaneous drawings were not held. Thus, the $59,060 was never used for the purpose for which it was submitted; nor was it refunded to appellant. In the November 1980 simultaneous drawing, appellant filed 15,671 DEC's on behalf of its clients. Two checks totaling $131,260 were enclosed with the DEC's as filing fees. The dollar amount due for the filing fees was $156,710. Therefore, appellant's remittance was deficient in the amount of $25,450. Accordingly, BLM returned appellant's DEC's. On December 17, 1980, appellant submitted a letter protesting the return of its DEC's, requesting a detailed response from BLM regarding the return, and advising BLM that the money remitted for the January and February simultaneous drawings, which were never held, was available for the November 1980 filing fee deficiency.

BLM, by a December 30, 1980, decision, dismissed appellant's letter of protest citing 43 CFR 3112.2-2(b) 2/ and Federal Energy Corp., 51 IBLA 144 (1980), appeal pending, Federal Energy Corp. v. Watt, Civ. No. 81-0433 (D.D.C. Feb. 23, 1981). The decision also indicated that appellant's checks would be returned to appellant after they were filmed. Because of the number of oil and gas leases involved, consideration of this appeal has been expedited by the Board.

1/ See Appendix for Wyoming parcels involved in this appeal.
2/ 45 FR 35164 (May 23, 1980) (effective June 16, 1980).

In its statement of reasons for appeal, appellant expounds at great length on "the purpose underlying adoption of the regulation" which it alleges occurred on May 23, 1980. Among other things appellant states that "the second conclusion to be drawn from the regulatory history [of 43 CFR 3112.2-2] is that the sole purpose of the regulation was to guard against bad checks and avoid the excessive administrative expense and inconvenience associated with attempting to collect and account for them." Accordingly, appellant further contends that the rationale of Federal Energy Corp., supra, does not apply because the Board's decision in that case

> sets forth no facts to demonstrate any degree of administrative inconvenience in accomplishing the accounting transaction required to insure full payment of all filing fees by appellant. Nor does it comment on the undoubted fact that the new procedure * * * involves performance of significantly less administrative work than BLM was required to perform when it cashed literally hundreds of Stewart's separate checks and correlated each to the separate group of filings submitted with it. Nor may the BLM rely on the Federal Energy Corp. decision without making findings.

Federal Energy Corp., supra, involved the submission of $87,560 for 8,757 offers. The fee was thus $10 short. In that decision, the Board held that BLM correctly determined that the entire group of filings submitted with the remittance was unacceptable under 43 CFR 3112.2-2(b) and properly returned these filings to their respective offerors together with the filing fees, as provided in 43 CFR 3112.5(a)(3). Federal Energy Corp., supra at 146. The Board in Federal Energy Corp., supra, went on to say:

> BLM has advised us that it received 322,275 acceptable filings for the July 1980 Wyoming drawing alone. * * * When such numbers are involved, it is not unreasonable for the Department to demand strict compliance with filing requirements and not to take extra steps to protect those who do not comply from the proper consequences of their failures.
>
> Similarly, the Department reasonably declines to consider filings for which proper fees are not tendered in situations where there are literally thousands of others who are able to comply with its requirements for the orderly consideration of lease offers. Appellant had adequate notice of the terms of these new regulations, as they were published well in advance of their application. Accordingly, it works no injustice that BLM returned appellant's client's offers in these circumstances. [Emphasis in original; footnote omitted.]

We would note, parenthetically, that in the November 1980 drawing a total of 383,094 acceptable filings were received by the Wyoming State Office.

[1] Appellants' arguments relating to the purposes of the "new" regulation are beside the point. The requirement that each offer be accompanied by a nonrefundable $10 filing fee has existed since the beginning of the simultaneous filing system. See 43 CFR 192.42(e)(1), 192.43(c) (1963). The applicable regulation, prior to the May 23, 1980, amendments, read: "The entry card must be accompanied by a remittance covering the filing fee of $10. The filing fee may be paid in cash or by money order, bank draft, bank cashier's check or check." 43 CFR 3112.2-1 (1979).

The 1980 amendments, while changing the acceptable forms of remittance (by eliminating personal checks, and various other forms of payment) did not alter the requirement that each offer be accompanied by a $10 remittance. Thus, the applicable regulation now provides:

> § 3112.2-2 Filing fees.
>
> (a) Each filing shall be accompanied by a $10 filing fee. The filing fee shall be paid in U.S. currency. Post Office or bank money order, bank cashier's check or bank certified check, made payable to the Bureau of Land Management. Checks drawn on foreign banks shall not be accepted.
>
> (b) A single remittance is acceptable for a group of filings. Failure to submit sufficient fees to cover all filings shall render unacceptable the entire group of filings submitted with that remittance. Such filings shall be returned to the applicant in accordance with § 3112.5 of this title.
>
> (c) An uncollectible remittance covering the filing fee(s) shall result in disqualification of all filings covered by it. In such a case, the amount of the remittance shall be a debt due to the United States which shall be paid before the applicant is permitted to participate in any future selection.

Subsections (b) and (c) did not in any way change existing procedures. Appellant admits that it formerly sent aggregate checks based either on the individual client or the specific parcel. See Affidavit of Daniel P. Haerther at 2. This was, indeed, a general practice of both individuals as well as filing services. Cf. Bertram F. Rudolph, Jr., 39 IBLA 167 (1979). Disqualification of an offer because of the uncollectible nature of the filing fee remittance has occurred in numerous past cases. See, e.g., Charles P. Ricci, 33 IBLA 288 (1978); Jonathan T. Ames, 33 IBLA 1 (1977); Charles F. Mullins, 6 IBLA 184

(1972). Thus, the only change effectuated by the statute was in the form of an acceptable remittance.

Despite the lengthy arguments relating to the purpose of the change in regulation, it is clear that appellant's offers were not rejected because they were accompanied by an improper form of payment Rather, they were rejected because they were not accompanied with a sufficient remittance. The requirement that each offer be accompanied by a payment of $10 was neither added nor altered by the 1980 amendments. Appellant's attempt to obfuscate this point must be rejected. 3/

Appellant admits that the error was occasioned by a mathematical transposition of a "1" for a "4" which resulted in an undercount of 3,000 offers. 4/ Stewart contends, however, that because of the difficulties in obtaining hundreds of certified checks, it was forced by the new regulation to lump together all filings in each state office in one payment. This, appellant argues, increased the risk that shortages might occur which would require the rejection of all its offers.

While we understand what appellant is saying, we are unable to ascertain how these statements relate to the issue before us. Admittedly, Stewart Capital is a large filing service which makes numerous filings. Nevertheless, it is Stewart's obligation to see that these filings are in order and accompanied by proper remittances. As this Board has noted in a different context:

> Companies are not held to a higher standard of diligence by the mere fact of their corporate structure. But by the same token, they cannot hide behind the bulk and complexity of their organizations, so as to make "justifiable" for them actions which would not be held to be justifiable for individual lessees.

Monturah Co., 10 IBLA 347, 348 (1973). The error which occurred herein was that of appellant and its agents. As Judge Pratt noted in Reichhold Energy Corp. v. Andrus, Civ. No. 79-1274 (D.D.C. Apr. 30, 1980), "We will not permit the plaintiff to shift the blame for its troubles to the Secretary of the Interior."

3/ In this regard, we would point out that it is scarcely surprising that the legislative history of the 1980 amendments dwelt on the requirement of "guaranteed" remittances. This was the only substantive change being made, and it would be a considerable waste of time to explicate at length on other requirements which had been in existence since the advent of the simultaneous system.

4/ According to the affidavit of Daniel P. Haerther, Stewart, in addition to sending a filing check for the total number of cards filed, also sent a "buffer" check of approximately 5 percent of the total amount due in order to avoid rejection for minor miscounting. This explains the discrepancy in the fact that while 3,000 offers were not counted, the deficiency
amounted to only $25,450.

Appellant's contention that various findings of fact relating to administrative convenience were a necessary prerequisite to rejecting its filings is similarly without merit. The regulation requires payment of the filing fees in the appropriate amount. The only "fact" necessary to reject these filings was an insufficiency in the tendered amount. That the two checks submitted were deficient in the amount of $25,450 is undisputed. This "fact," and this fact alone, required rejection of appellant's offers.

[2] Appellant attempts to avoid the result of its error by arguing that:

> To the extent that the regulation is interpreted to require rejection of Stewart's filing fees on hand in the BLM office as of the close of the November filing period, despite the fact that the totality of the funds on hand far exceeded the amount due by Stewart in filing fees, then that interpretation exceeds the purpose of the regulation while it simultaneously causes the regulation to work at cross-purposes to the statutory program.

In effect appellant is arguing that a portion of the filing fees submitted by appellant for the January and February 1980 simultaneous drawings that were never held, should have been used to cover the deficiency for the filing fees submitted for the November 1980 simultaneous drawing. In an oil and gas lease termination case, involving a similar contention, Wilfred Plomis, 51 IBLA 125 (1980), the Board noted:

> Orderly administration of the oil and gas leasing program demands that rentals be paid to BLM in a manner consonant with administrative convenience. This necessarily requires that BLM not, without prior written instruction, transfer money paid for one purpose to another use, e.g., money paid for the first year's rental to a subsequent year's rental. Logic dictates this result. It is not inconceivable that, even though a lessee is entitled to refunds from BLM exceeding the annual rental which has become due, the lessee intends positively by his nonaction to permit the lease to terminate by operation of law. 30 U.S.C. § 188 (b) (1976). BLM should not be called upon to hazard guesses as to the intentions of the lessee. This view is consonant with earlier decisions of this Department refusing to have BLM guess as to a party's intentions in oil and gas matters and making such party bear the consequences of ambiguous conduct. [Citations omitted.]

Even though the Plomis case involved an excess rental payment on a 1978 oil and gas lease to be considered advance rentals for 1979, the decision in that case can be applied to the facts in this case. BLM has no authority, on its own volition, to transfer funds which a party has deposited for one purpose to a different purpose which BLM may believe is desirable for the party. Moreover, it is clear that appellant did not intend that these prior filing fees be used in this manner,

since if that were its intent, its November submission should have been short by $59,060 and not $25,450. Appellant's submissions clearly show that it intended to submit the full amount of fees in November and, as a result of a transpositional error, had failed to do so. Appellant had no expectation that its prior filing fees would be applied to its submission. Appellant did give BLM permission, in its December 17, 1980, protest letter to apply the unused January and February DEC filing fees to the November 1980 filing fee deficit, but that authorization was not timely. The November 1980 filings had to be completed at BLM on or before November 24, 1980, at which point of time insufficient funds were available to meet the filing fee requirement. Rejection was mandatory. 5/

[3] Finally, appellant has requested a hearing pursuant to 43 CFR 4.415. The pertinent portion of 43 CFR 4.415 states that "an appellant * * * may if he desires a hearing to present evidence on an issue of fact, request that the case be assigned to an administrative law judge for such a hearing." The Board has the discretion to grant a request for a hearing on issues of fact but, in order to warrant such a hearing, an appellant must allege facts which, if proved, would entitle it to the relief sought. Mardelle M. Smith, 42 IBLA 136 (1979); Sun Studs, Inc., 27 IBLA 278 (1976); Rodney Rolfe, 25 IBLA 331 (1976). There are no disputed facts on issues relevant to this appeal. Accordingly, appellant's request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Department of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

C. Randall Grant, Jr.
Acting Administrative Judge

Douglas E. Henriques
Administrative Judge

5/ The State Office has not informed this Board of its reason for not returning appellant's prior filing fees. Regardless, however of whether the failure to return the fees was a matter of sound policy considerations or inadvertence, BLM was not authorized, for the reasons stated above, to apply these payments to the November deficiency. Inasmuch as appellant has not requested refunds of these rentals in this appeal, we make no ruling thereon.

APPENDIX

WY1020	WY2858	WY6383	WY1418
WY1048	WY2876	WY6397	WY1525
WY1105	WY2965	WY6472	WY1543
WY1123	WY3010	WY6490	WY1600
WY1230	WY3042	WY6561	WY1703
WY1244	WY3056	WY6575	WY1945
WY1258	WY3220	WY6593	WY1963
WY1276	WY3234	WY6753	WY2107
WY1301	WY3252	WY6771	WY2143
WY1329	WY3369	WY6888	WY2296
WY1422	WY3501	WY6892	WY2531
WY1436	WY3636	WY6981	WY2620
WY1440	WY3640	WY6995	WY3038
WY1696	WY3711	WY7072	WY3131
WY1721	WY3725	WY7086	WY3163
WY1749	WY3743	WY7090	WY3305
WY1810	WY3878	WY7175	WY3323
WY1856	WY3903	WY7193	WY3387
WY1874	WY4030	WY7250	WY3529
WY2022	WY4044	WY7492	WY3533
WY2036	WY4129	WY7577	WY3654
WY2111	WY4240	WY7581	WY3707
WY2125	WY4254	WY7666	WY4058
WY2200	WY4311	WY7670	WY4101
WY2214	WY4389	WY7684	WY4147
WY2232	WY4400	WY7755	WY4343
WY2321	WY4414	WY7791	WY4642
WY2349	WY4432	WY7862	WY4674
WY2367	WY4478	WY7951	WY4941
WY2385	WY4496	WY7983	WY4969
WY2410	WY4503	WY8181	WY5591
WY2438	WY4521	WY8284	WY5662
WY2442	WY4549	WY8341	WY5886
WY2456	WY4585	WY8597	WY5993
WY2474	WY4727	WY8672	WY6173
WY2509	WY4816	WY8864	WY6351
WY2527	WY4820	WY8882	WY7371
WY2545	WY4905	WY8953	WY7460
WY2563	WY5199	WY8971	WY7595
WY2634	WY5260	WY8999	WY7894
WY2652	WY5484	WY9151	WY8060
WY2698	WY5555	WY9183	WY8355
WY2705	WY5573	WY9197	WY8793
WY2723	WY5751	WY9450	WY8850
WY2741	WY5872	WY1052	WY9062
WY2769	WY5975	WY1141	WY9094
WY2812	WY6191	WY1169	WY9286
WY2830	WY6262	WY1187	WY9393
WY2844	WY6294	WY1212	